IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3028 OF 2005

Security Guards Board for Greater Bombay & Thane Dist. .. Petitioner
v/s.
Commissioner (Appeals) of Central Excise, Mumbai & ors. .. Respondents

Mrs.Lata Desai i/by Pallavi Divekar for petitioner.

Mrs.S.V.Bharucha with Mr.A.S.Rao for respondents.

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**CORAM : H.L. GOKHALE &**
**J.P. DEVADHAR, JJ.**

**DATED : 21st December 2005**

**P.C. :**

1. Heard Mrs.Desai in support of this Petition. Mrs.Bharucha appears for the respondents.

2. Rule. Rule is made returnable forthwith. Mrs.Bharucha waives service for the respondents.

3. The petitioner is a Security Guards' Board constituted under a separate statute. The respondents have demanded the service tax from the petitioner-Board on the ground that it is a Security Agency under Section 65(94) of the Finance Act, 1994. The order in original dated 30th September 2004 was passed against the

petitioner-Board. An Appeal was filed against that order. An Application for stay was moved. It came to be rejected on 28th February 2005. The petitioner-Board has filed an Appeal against that decision to the Service Tax Tribunal. During the pendency of that Appeal, the order passed on 28th February 2005 was followed by a consequential order dated 16th August 2005 inasmuch as the pre-deposit under the earlier order was not made.

4. Mrs.Desai appearing for the petitioner states that the pre-deposit was not made since the order dated 28th February 2005 was already challenged. She, however, states that the petitioner will file an Appeal against the order dated 16th August 2005 also. Her submission is that the Board should not be equated with the Security Agency and should not be imposed with the service tax.

5. Mrs.Bharucha appearing for the respondents, on the other hand, submits that the order of pre-deposit was justified and the consequential order is only the outcome of not depositing the pre-deposit.

6. We are of the view that instead of filing

an Appeal against the order dated 16th August 2005, it will be better that the Appeal filed before the Commissioner (Appeals) is decided. We, therefore, set aside the orders dated 28th February 2005 and 16th August 2005 and revive the Appeal on the file of the Commissioner (Appeals) which he will decide without insisting on the pre-deposit as directed on 28th February 2005. This order is being passed in the peculiar facts and the submissions of the petitioner.

7. Rule is made absolute as above. No order as to costs.

**(H.L. GOKHALE, J.)**

**(J.P. DEVADHAR, J.)**